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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/590,521	06/09/2000	Arturo A. Rodriguez	A-5704	1994

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EXAMINER	
SRIVASTAVA, VIVEK	

ART UNIT	PAPER NUMBER
2611	21

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/590,521	RODRIGUEZ ET AL.	
	Examiner	Art Unit	
	Vivek Srivastava	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 November 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *54,55,68-72 and 83-90* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *54,55,68-72 and 83-90* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Response to Arguments

(1) Applicant argues that neither Brown nor Gordon disclose "wherein the plurality of auxiliary digital transmission channels enable random access functionality for programs transmitted via a plurality of other digital transmission channels." Therefore, it would not have been obvious for a person of ordinary skill in the art to allocate bandwidth to the plurality of auxiliary digital transmission channels responsive to "receiving information identifying a first level of random access functionality selected by a first user for a first program that is to be provided to the first user at a future time."

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It should be noted that applicant is arguing that "neither Brown nor Gordon discloses....." the claimed limitation. The claimed limitation is taught by a combination of Brown and Gordon. As a result, the Applicant's arguments are not persuasive.

(2) With regards to dependent claim 68, Applicant argues that Brown does not teach, suggest, or disclose "responsive to receiving the request, providing the user with a first selectable option and a second selectable option."

As discussed in the previous office action and provided again below. Brown does disclose a first selectable option and a second selectable option as broadly claimed and it should be noted that it provided after a user request. As a result, the Applicant's arguments are not persuasive.

(3) With regards to claim 70, Applicant argues that Li does not teach, suggest, or disclose "responsive to enabling the plurality of random access functions, communicating to the user an amount of bandwidth that has been consumed as a result of random access functionality that has been provided to the user."

The Examiner concurs that Li fails to disclose the claimed limitation. However, it would have been obvious to modify Li to include the claimed limitation. See rejection below.

(4) With regards to claim 86, Applicant argues that the cited references do not teach, suggest or disclose "a processor that is programmed by the program code to: provide the user with a first selectable option and a second selectable option responsive to the DHCT receiving a request from a user for implementing a random access function."

The Examiner respectfully disagrees. This feature is disclosed by Brown. See rejection below.

(5) With regards to claim 88, Applicant argues that none of the references cited teach, suggest or disclose "a processor that is programmed by the program code to: communicate to the user an amount of bandwidth that has been consumed as a result of random access functionality that has been provided to the user."

The Examiner respectfully disagrees. This feature is disclosed by Li. See rejection below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 68 and 86 is rejected under 35 U.S.C. 102(b) as being anticipated by Brown (5,771,435).

Considering claims 68 and 86, Brown discloses a set-top (see fig 1 item 120) which receives digital programs (see col 4 lines 40-51) noting that the set-top receiving digital programs meets the claimed DHCT limitation and that the set-top inherently comprises a processor. Brown further discloses an interactive NVOD/VOD system wherein a user requests a NVOD program which enables a limited amount of random access functions, including (1) stop viewing an originally requested presentation and (2) start viewing another presentation which meets the claimed "providing a user with a first selectable option". Brown further discloses providing a user with selecting a VOD option which results in VOD random access functions being accessible after a second period of time (see col 3 lines 35-40). It should be noted that since the user has to wait for the broadcast of the NVOD program (since NVOD is not instantaneous as VOD), the second period is shorter than the first period since the second option of selecting a VOD version is at the time of offering the NVOD presentation (see col 3 lines 25-40).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 54, 55 and 83-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Gordon et al (6,253,375).

Considering claims 54 and 55, Brown discloses receiving information from a user as to NVOD or VOD program each of which have a level of random access functionality (see col 2 lines 24-30, col 3 lines 34-40). It should be noted that both NVOD and VOD are requested programs and are thus provided to the user in the future. Brown fails to disclose the claimed allocating bandwidth to a plurality of auxiliary digital transmission channels responsive to at least the information, wherein the plurality of digital transmission channels enable random access functionality for programs transmitted via a plurality of other digital transmission channels and wherein each of the plurality of digital channels enables random access functionality for a plurality of other digital transmission channels.

Gordon teaches and interactive distribution system which transmits an information channel and a command channel which is used with the information channel (see Abstract, col 2 lines 13-34). It would have been obvious utilizing two separate channels, one for the video data and one for random access function would have limited the congestion of transmitting all the data on one channel and would have enabled viewing of the video channel even if the random access channel was non functioning. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brown to include the claimed allocating bandwidth to a plurality of auxiliary digital transmission channels corresponding to a plurality of VOD channels responsive to received information (i.e. determining if received information

strains system resources before allocating another VOD stream – see col 7 lines 48-50) to limit congestion and to enable viewing even if the control random access channel was not functioning.

Claims 83-85 are met by the discussions above.

Claims 69 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (5,771,435).

Regarding claims 69 and 87, Brown fails to disclose the claimed wherein selecting the second option results in additional expense for the user. It would have been obvious to charge additional expenses for receiving a VOD version of the program to limit the number of VOD sessions to conserve the additional bandwidth required for a VOD version. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brown to include the claimed limitation to dissuade user's from requesting a VOD version unless it is really wanted to conserve bandwidth.

Claims 70 – 72, and 88-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al in view of Crosskey et al (6,035,281).

Considering claims 70 and 88, Li discloses a set-top box which inherently comprises a memory configured to store program code and a processor which provides a user with a plurality of random access functions like ordering a VOD program, splitting off from a shared video stream to be assigned to a dedicated video stream enabling

VCR type functions (see col 4 lines 59-67 and col 5 lines 20-27). Further Li, discloses the price or the amount a user is willing to pay is based on the consumption or amount of interactivity (col 14 lines 8-18). At the high-end, the user enjoys full interactivity without a batching delay, at a median level the user enjoys full interactivity with a batching delay and at a limited level the user gets limited interactivity and a batching delay having

Li fails to disclose responsive to enabling the plurality of random access functions, communicating to the user an amount of bandwidth that has been consumed as a result of random access functionality that has been provided to the user.

Crosskey teaches permitting a user to view billing information via web pages (see col 2 lines 54-64) and also teaches billing users for actual bandwidth usage (see col 3 lines 34-35 and col 4 lines 7-9). It would have been obvious modifying Crosskey to include the claimed limitation and communicating the amount of bandwidth used via web pages would have provided a more detailed and accurate method for billing which would have been more beneficial for both the user and service provider.

Regarding claims 71 and 90, the combination of Li and Crosskey discloses the claimed limitation, where Crosskey discloses billing a user which would inherently comprise providing a user with fees for usage (see col 3 lines 34-35 and col 4 lines 8-9).

Regarding claims 72 and 89, the combination of Li and Crosskey disclose the claimed limitation, wherein Crosskey discloses a user can view information communicated over web pages, noting that web pages are graphical representations

provided to a user via a graphical user interface (see col 2 lines 53-57 and col 4 lines 64-67).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872 - 9314, (for formal communications intended for entry)

Or:

(703) 308- 5399 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (703) 305 - 4038. The examiner can normally be reached on Monday - Thursday from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andy Faile, can be reached at (703) 305 - 4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305 - 3900.

VS

1/16/04

VIVEK SRIVASTAVA
PRIMARY EXAMINER